

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Plaintiff,

ELODIA SANCHEZ, et al.,

Plaintiffs-Intervenors,

v.

EVANS FRUIT CO., INC.

Defendant,

and

JUAN MARIN and ANGELITA
MARIN, a marital community,

Defendants-Intervenors.

NO. CV-10-3033-LRS

**ORDER GRANTING
MOTION TO QUASH**

BEFORE THE COURT is the Plaintiffs' Joint Motion To Quash A Subpoena For Mid Valley Community Clinic And Sunnyside Community Hospital Pursuant To Fed R. Civ. P. 45(c) (ECF No. 455). This motion is heard without oral argument.

Any failure by Plaintiffs' counsel to formally confer with Defendants'

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1 counsel pursuant to LR 37.1(b) prior to filing the Motion To Quash is
2 inconsequential in light of the emails which passed between counsel (ECF 496-1)
3 prior to filing of the motion. It is apparent a formal conference would not have
4 achieved a resolution given the solidly divergent views expressed in those emails.
5 Impasse had already been reached by the time Plaintiffs filed their motion.

6 The class members whose records are sought answered interrogatories on
7 November 4, 2011, identifying the conditions for which they sought medical
8 treatment at either Mid Valley Community Clinic or Sunnyside Community
9 Hospital. (ECF No. 496-2). These conditions were limited to foot injuries, knee
10 injuries, laboratory work, and pregnancy. There is nothing suggesting the class
11 members sought treatment for a mental health condition or the physical
12 manifestations of a mental health condition.

13 To the extent there might be anything within these records that is relevant
14 to the mental health of these class members, the court concludes, at this time, the
15 same are protected from disclosure by the psychotherapist-patient privilege. The
16 class members whose records are sought appear to seek compensation for “garden
17 variety” emotional distress in that their alleged emotional distress did not cause
18 specific mental or medical conditions, and did not have any physical
19 manifestations.

20 By seeking emotional distress damages, these class members have not
21 waived the psychotherapist-patient privilege. Here, the court deems it appropriate
22 to apply the narrow approach to waiver as was done in *EEOC v. Wal-Mart Stores,*
23 *Inc.*, ____ F.R.D. ____ (E.D. Wash. 2011). These class members do not intend
24 to introduce medical records or expert testimony to support their claims for
25 emotional distress damages. They will not rely on any privileged

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1 communications. "Multiple causation," that being the possibility emotional
2 distress could have been caused by something other than alleged sexual
3 harassment, is not clearly an issue with regard to these class members. If in the
4 course of deposing these class members, Defendants discover a basis for believing
5 there are more particularized mental or physical health issues, or that there were
6 other potential causes or a long history of a relevant mental or physical illness,
7 Defendants may offer that additional information to the court in a motion seeking
8 approval of subpoenas for particular medical records. *Id.* at *2-3.

9 For the reasons set forth above, Plaintiffs' Joint Motion To Quash (ECF No.
10 455) is **GRANTED** and the subject subpoenas are **QUASHED**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this order and to provide copies to counsel of record.

13 **DATED** this 24th day of January, 2012.

14 *s/Lonny R. Suko*

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16 LONNY R. SUKO
United States District Court Judge

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